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July 2, 1956

Mr. Winfield J. Phillips, Bank Commissioner
State House
Concord, New Hampshire

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SEP 22 1998

CONCORD, N.H.

Dear Mr. Phillips:

You have requested this office to advise you relative to the legality of a proposed plan whereby certain New Hampshire banks either under a master policy or by individual bank contract with insurance company would issue insurance to individuals to whom loans are made secured by mortgage of certain residential property being insurance on the life of the mortgagor up to a maximum of \$10,000 but in any event not greater than the loan balance. It is proposed that the cost of this insurance either will be sixty cents per month per \$1,000 of outstanding loan balance regardless of the age of the borrower or the insured borrower will pay a uniform dollar premium throughout the life of the loan.

It has been pointed out that problems would arise in the event that the insured mortgagor either

- (1) repays his loan prior to maturity,
- (2) defaults on his obligation with resulting foreclosure, or
- (3) decides simply to drop the life insurance but keep his mortgage loan in good standing.

In any of those cases, it is proposed that the mortgagor would owe the bank for the amount advanced by the latter to cover the accumulated difference between the level premium and the gross premium.

RSA 387:5(II) requires that in order to be a legal investment for savings banks notes secured by a policy of a life insurance company must be secured by a policy having cash surrender value at least ten per cent in excess of the notes while held by the bank. The proposal, insofar as savings banks are concerned, is beyond the powers of such banks.

There appears to be no reason why trust companies and similar corporations may not loan to a depositor the full premium of an insurance policy and arrange for repayment in installments subject to the other statutory limitations on loans and investments.

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OFFICE OF ATTORNEY-GENERAL

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It should be noted, however, that the provisions of REA 417, particularly RSA 417:4 (9) relating to unfair insurance trade practices must be scrupulously observed.

Ultimate approval of such plans should be individual and made only after careful scrutiny of the particular procedures undertaken by the various banks. Precise blanket approval of the indefinite memorandum submitted in the enclosures accompanying your letter of May 29, 1956 is not possible. Said plans must be such as to qualify under RSA 408:15 (2) in any event.

In this connection, it is noted that under the paragraphs of the May 10, 1956 memorandum entitled "Eligible Banks" and "Alternative Plans" stating that smaller banks will participate as a group under the terms of one master policy and that larger banks may elect to do so. RSA 408:15 (2), (a), provides that the policy may make eligible for insurance "debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise."

A group of banks, regardless of their membership in a state association, does not qualify either as "subsidiary corporations" or affiliated corporations under common control. Therefore, the proposal of the insurance company to issue one policy to a group of banks would not be in compliance with the insurance laws of this State. Individual life insurance contract by the insurance company with each separate bank is required.

Very truly yours,

George F. Nelson
Assistant Attorney General

GFN:W